

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRY FABRICANT,

Plaintiff,

Case No. 23-cv-11111

Hon. Matthew F. Leitman

v.

DAVID ALLEN CAPITAL, INC.,

Defendant.

ORDER REQUIRING PLAINTIFF TO SERVE
DEFENDANT WITH NOTICE OF HEARING

In this action, Terry Fabricant alleges that Defendant David Allen Capital, Inc. (“DAC”) violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* when DAC made pre-recorded telephone calls to Fabricant and others. (*See* Compl., ECF No. 1.) Fabricant seeks injunctive relief and monetary damages on behalf of all persons injured by DAC’s conduct. (*See id.*)

No counsel has appeared for DAC in this case. Instead, on June 5, 2023, David Allen Rutz, the apparent owner of DAC, filed a motion to dismiss Fabricant’s complaint on DAC’s behalf. (*See* Mot. to Dismiss, ECF No. 8.) On November 20, 2023, the Court denied the motion to dismiss on the basis that, as a corporate entity, DAC cannot represent itself and/or be represented by a non-attorney and can only proceed in this action through licensed counsel. (*See* Order, ECF No. 12.) The Court

further ordered DAC to obtain counsel no later than January 8, 2024, and granted Fabricant the right to move for a default judgement should DAC fail to do so. (*See id.*)

As of the date of this order, no counsel has appeared for DAC. (*See Dkt.*) On January 10, 2024, Fabricant requested that the Court enter a default against DAC, and the Clerk of the Clerk entered that default on January 11, 2024. (*See Request*, ECF No. 14; Default, ECF No. 15.)

On February 9, 2024, Fabricant filed a motion for a default judgment against DAC. (*See Mot. for Default Judgment*, ECF No. 9.) Fabricant also filed a motion to certify a class. (*See Mot. to Certify*, ECF No. 18.) The Court has now issued a Notice of Hearing setting both of Fabricant's motions for a Zoom electronic hearing on **June 21, 2024, at 1:00 p.m.** (*See Notice of Hearing*, ECF No. 19.)

By no later than **June 13, 2024**, Fabricant shall serve DAC with (1) the Notice of Hearing, (2) this order, and (3) a proposed default judgment. In addition, by no later than **June 13, 2024**, Fabricant shall file a Certificate of Service on the docket confirming that he has served DAC with these documents. Finally, by no later than **June 13, 2024**, Fabricant shall submit the proposed default judgment to the Court through the Utilities function of CM/ECF.

IT IS SO ORDERED.

Dated: June 4, 2024

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on June 4, 2024, by electronic means and/or ordinary mail.

s/Holly A. Ryan

Case Manager

(313) 234-5126